SUPREME COURT, U.S.
FILED
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No. 94 - 1167

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1994

KACHINA PLYWOOD, INC., INTERMOUNTAIN WOOD PRODUCTS, INC., ROBERTSON WOOD PRODUCTS, INC., ZECO, INC., NEVADA-WEST SYSTEMS, INC., SUNWAY SYSTEMS, INC., CANCO, INC., PERCO, INC., and ANDREW B. SPAIN,
Petitioners,

v.

NORMA J. HURT,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

G. Gregory Eagleburger, Esquire
THE EAGLEBURGER GROUP
2999 North 44th Street, Suite 600
Phoenix, Arizona 85018
(602) 840-6533

Counsel of Record
for Respondent

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No authorities are deemed necessary by Respondent to respondent to respond to this Petition.

JURISDICTION AND PRIOR DECISIONS

The opinions below of the Bankruptcy Appellate Panel and Court of Appeals for the Ninth Circuit, as well as the jurisdiction statements provided by the Petitioners, are substantially correct as stated. In essence, this is the third attempt by Petitioners to overturn a Bankruptcy Court Judgment stipulated to by them in open Court. The two previous appeals have been determined to have been frivolous.

This case neither concerns any constitutional issue nor the significant establishment or change of existing law or public policy, nor has it any import on a significant body of the law throughout the United States. Therefore, it is not a proper subject for the invocation of this Court's review.

STATEMENT OF THE CASE

The facts presented in the Petitioner's Statement of the Case are totally irrelevant, immaterial and wrong.

The correct factual and procedural summary is set forth in the Opinion of the Bankruptcy Appellate Panel contained in Appendix B to Petitioners' Brief. page 2 through 6, and the decision of the Bankruptcy Appellate Panel dated June 29, 1993, in the case of Sunway Systems, Inc. v. Hurt case attached as Appendix Item 1 hereto, which facts are correct and applicable.

The Debtor/Respondent, Norma J. Hurt, was married to Milton G. Pace until 1978 at which time their marriage was dissolved and the property divided by the Superior Court of Maricopa County, Arizona. The Judgment of dissolution entered in 1978, attached hereto as Appendix Item 2, clearly refutes the assertion that there were substantial debts of Mrs. Hurt owed to various creditors/Petitioners at the time of the dissolution of the marriage. The Maricopa County Superior Court specifically found that Milton G. Pace was inventing these debts for his own purpose.

The Petitioners' unsubstantiated statement that a settlement prior to the 1990 Stipulated Judgment and Order of the various claims was reached is pure fabrication. No settlement was ever reached between Milton G. Pace and Norma J. Pace, now Norma J. Hurt prior to January, 1990. Consequently, the claim that the 1985 involuntary bankruptcy was filed against Norma J. Hurt as a result

of a breach of any settlement is also in error. The reason that the involuntary bankruptcy petition was filed was that Mrs. Hurt was trying to sell some of the real property given to her in the divorce judgment and Milton G. Pace did not want that to happen.

As a result of the Petitioner's placing Mrs. Hurt into involuntary bankruptcy in 1985, Mrs. Hurt did file an adversary action to completely resolve all of the alleged claims of the Petitioners. All of the various claimants were consolidated as Defendants into a single Bankruptcy adversary proceeding bearing No. 87-199 which came on for final hearing on January 22, 1990.

That adversary hearing terminated early on its second day because a stipulation was entered into between all parties, reduced to writing and dictated on the record before the trial Court. At that time, the Bankruptcy trial Judge specifically questioned each and every person, including Petitioners here, as to whether or not the settlement was agreed to. Each and every person, including all the Petitioners herein, acknowledged to the trial judge that the settlement was correct.

The Bankruptcy Court Judge on April 3,1990, after hearing Petitioners' objections, entered his order approving that settlement with minor changes. See Appendix A to Petitioner's Brief.

This is a simple case in which the Petitioners (various corporations having no assets and effectively controlled by Milton G. Pace) claimed that they were owed substantial debts from long ago in an attempt by them to prevent the former wife of Milton G. Pace from enforcing her position in the divorce judgment, The very fact that all of these Petitioners who allegedly were owed more than one million, five hundred thousand dollars ($1,500,00.00) would agree to forego all of their claims and further agree to pay the costs and expenses that Respondent, Norma J. Hurt, incurred in the bankruptcy they created, gives a clear indication of the weakness of the Petitioner's case before the Bankruptcy Judge and their desire to settle rather than receive the Judge's ruling. A simple reading of the January 22, 1990, trial transcript and the March 12,1990, hearing transcript before the Bankruptcy Judge; the Bankruptcy Appellate Panel's decision in this case as well as the companion case of Sunway Systems, Inc. v. Norma Pace (See Appendix Item 2 hereto); and the affirmance of the Ninth Circuit Court of Appeals decisions in the related cases will clearly show the present Petition to be a mere extension of the frivolous litigiousness and vindictiveness of Milton G. Pace through others.

REASON FOR DENYING THE WRIT

1. The bankruptcy Appellate Panel and Court of Appeals were correct.

The standard for review in the Courts below was the "clearly erroneous" standard which has been determined to have been met by both the Bankruptcy Appellate Panel and the United States Court of Appeals for the Ninth Circuit.

Petitioners' four reasons for this Court issuing the Writ of Certiorari are meritless. They are: a) the settlement agreement contained at least one material ambiguity; b) agreement had not been authorized by all the parties; c) the agreement was reached based on misrepresentations by opposing counsel; and d) the Petitioner Andrew B. Spain did not have any input into the agreement.

These issues can hardly be said to be compelling reasons for the United States Supreme Court to undertake the issuance of a Writ of Certiorari to review consistent opinions from two lower courts. These same issues have been dealt with on at least four prior occasions by the Bankruptcy Appellate Panel and the United States Court of Appeals for the Ninth Circuit and rejected as frivolous.

A. Ambiguity in the Stipulation.

The ambiguity claimed is as to (1) the type of the deed to be given by Debtor to the single piece of real property, and (2) the person to whom such deed was to be given. The Bankruptcy Court upon request of the Petitioners clarified the type of deed in its April 3, 1990, Order and Judgment. The lack of a defined recipient for such deed was noted as to the "creditors" and is certainly not material; the name of the recipient could be left blank so long as the debtor deeded the property. The exact identity of the recipient was agreed to be up to the creditors, Petitioners here.

B. Authorization of the Parties.

This argument has also been totally rejected by the Bankruptcy Appellate Panel and the United States Court of Appeals for the Ninth Circuit. The Bankruptcy Court, at the time of the stipulation, specifically asked everybody whether or not they were in agreement with the settlement and each of the parties answered, through their attorneys and other representatives, in the affirmative. If the Petitioners truly believe that their attorneys did not have the authority to enter into the settlement or exceeded that authority, then they certainly have an avenue of relief against their own attorneys.

C. Alleged Misrepresentations.

As to the alleged misrepresentation by opposing counsel, these issues have been "cussed and discussed" ad nauseam. Language from the various hearings has been cited and recited on five different occasions, once before the Bankruptcy Court; twice before the Bankruptcy Appellate Panel; and twice again before the Court of Appeals. Each time the factual and legal basis for such complaint has been found to be unsupported.

The matter of the Debtor's counsel's statement as to a judgment lien has been specifically heard and resolved by the Ninth Circuit Court of Appeals in its decision of May 12, 1994, in the Sunway Systems, Inc. v. Hurt appeal, a copy of which is attached as Appendix Item 3, wherein the Court of Appeals specifically adopted the reasoning in the decision of the Bankruptcy Appellate Panel.

To the same extent, the Petitioners have previously tried to raise the content of the settlement negotiations and conversations leading up to them. These have been found to be unsupported on two separate occasions prior to the filing of this Petition for Writ of Certiorari.

D. Andrew Spain's Participation.

As far as Petitioners' contention that Andrew B. Spain never had any input into the settlement agreement, Milton G. Pace, the "puppeteer" of all of the Petitioners, himself, in open Court, on the record, stated that he had Mr. Spain's authority to enter into the settlement agreement for Mr. Spain. If Mr. Spain has any fight, it is with Mr. Pace, not Mrs. Hurt.

CONCLUSION

This Petition for Writ of Certiorari is not appropriate. The reasons given in the Petition have been decide by two different levels of appellate courts which uniformly concluded that they consist merely of an attempt by the Petitioners to get out of a settlement voluntarily made before the Bankruptcy Court at a time in which the Bankruptcy Court, like the Domestic Relations Court in the domestic relations action between the Debtor and Milton G. Pace before it, had expressed a clear indication that the claims being presented were not only false, but fraudulently false. This is another case of the Petitioners doing whatever is necessary to avoid the immediate consequences of their act and then later presenting claims as to why they

should be relieved of that voluntary act. As such, it does not qualify as an issue to be reviewed by the United States Supreme Court.

Therefore, the Petition for Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED this _____ day of January, 1995.

G. GREGORY EAGLEBURGER
2999 N. 44th Street, Suite 600
Phoenix, Arizona 85018
Attorney for Norma J. Hurt

APPENDIX

APPENDIX ITEM 1

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re	)	BAP No. AZ-90-1497-RJM
	)	BK. No. B 85-3802-PHX-RGM
Norma J. Hurt	)	Adv. No. 87-199
Debtor.	)	
	)	
SUNWAY SYSTEMS, INC.,	)	
Appellant,	)	
v.	)	
MILTON G. PACE, KACHINA PLYWOOD, INC.; INTERMOUNTAIN WOOD PRODUCTS, INC.; ROBERTSON WOOD PRODUCTS, INC.; ZECO, INC.; NEVADA-WEST SYSTEMS, INC.; CANCO, INC.; ANDREW B. SPAIN; PERCO, INC.; and NORMA J. HURT	)	MEMORANDUM
Appellees,	)	

Submitted Without Oral Argument
Pasadena, California — May 19, 1993

Filed - June 29, 1993

Appeal from the United States Bankruptcy Court
for the
District of Arizona

Honorable Cameron Wolfe, Bankruptcy Judge, Presiding

Before: RUSSELL, JONES, and MEYERS, Bankruptcy Judges.

Creditor appeals the bankruptcy court's denial of a motion to set aside a stipulated agreement pursuant to Fed.R.Civ.P. 60(b).

I. FACTS

Norma J. Hurt ("Hurt") and Milton G. Pace ("Pace") were married until 1978, at which time their marriage was dissolved and their property was divided by state court order. At the time of the dissolution there were outstanding business debts owed to various creditors as a result of the couple's proprietorship which wee never paid out of the couple's community assets.

In 1985, an involuntary petition was filed against Hurt which she consented to in 1986. In April 1987, Hurt filed an adversary proceeding seeking to disallow certain claims of various creditors, including the claim of Sunway Systems, Inc. ("Sunway"). Sunway filed an answer, and the issues were joined. The matter came to trial on January 22, 1990.

At the January 22, 1990 hearing, Sunway's counsel, Mr. J. Jeff Richardson ("Richardson"), presented evidence to establish the chain of titles and Sunway's ownership interest in certain properties known as the "Kensington" and "Julie" properties. Hurt's counsel argued that Sunway's interest in the "Julie" property was subject to a lien, in favor of Hurt, arising out of an award of attorney's fees from Pace and Hurt's Divorce Decree and Judgment. The lien was in excess of $19,000.00, which would purportedly eliminated Sunway's equity in the subject property. After inquiry by the court on whether the judgment had been renewed, Hurt's counsel, Mr. G. Gregory Eagleburger, stated that it had. (Transcript of Hearing, Exhibit #3, page 29).

After hearing Sunway's response to Hut's agreement, the court excused Richardson from further proceedings for the day. Richardson left the court at the time, and the case proceeded with the claims of other creditors.

Upon returning to his office, Richardson instructed his process server to search County records to determine if the judgment for attorney's fees had in fact been properly renewed. The process server reported back the next day, indicating that his search revealed that the judgment was properly renewed for the period ending May 12, 1983. However, the judgment was not renewed for the subsequent period ending May 15, 1988. (Affidavit of Andrew M. Saper, exhibit to Sunway's Trial Memorandum, Excerpt #5.)

On January 23, 1990, before any evidence was presented by any party, the court was advised that a settlement was reached on the entire adversarial proceeding including Sunway's claim. The settlement agreement was read into the record. At that time, attorney William C. Wulfers, Jr., ("Wulfers") advised the court that he represented Sunway on behalf of Richardson and was authorized to enter into agreement[1] . (Transcript of Record, Appellee's Exhibit B, at 3) Richardson was present in court during the reading of the agreement. No objection was raised by Richardson. The court approved the agreement.

Subsequently[2], Richardson advised other counsel, and Sunway of his findings that the attorney's fees judgment had not been properly renewed and might no longer constitute a lien against the "Julie" property.

Sunway filed an "objection to Form of Judgement/Motion to Set Aside Pursuant to Rule 60(b)" to have Sunway relieved of the settlement agreement. The bankruptcy court, during the March 12,1990 hearing, granted Sunway's counsel leave to present arguments on the motion. The court, however, implicity denied the motion by entering the judgment on April 3, 1990[3]. Sunway timely filed its notice of appeal on April 16, 1990[4]. We AFFIRM.

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[1] Richardson stated at the March 12,1990, hearing that he had confirmed that the settlement was indeed authorized by Sunway. He also stated that he was present in the courtroom while the settlement was being read into the record. ("Transcript of Record, Appellant's Excerpt of Record, Ex. #4, at 6) Sunway also states in its opening brief that Richardson was advised by Wulfers and Milton Pace that Mr. Hull, Vice President of Sunway, had authorized the settlement and had authorized Wulfers to execute the document on Sunway's Behalf. (Appellant's Opening Brief, at 7)

[2] The word "subsequently," without further elaboration as to when this transpired, is used by Richardson in the Sunway brief and record. We are unable to ascertain from the record exactly when this occurred.

[3] The court stated:
"Well, the orderly way to proceed on this is to enter the Judgment and let you do what you want about it."

(Transcript of Record, AER Ex. 4 at 13)

[4] The BAP had dismissed this Sunway appeal as untimely. Sunway appealed the dismissal to the Ninth Circuit Court of Appeals which directed that it be reinstated.

II. ISSUES

Whether the bankruptcy court erred in denying the Objection to the Form of Judgment and Motion to Set Aside Judgment under Fed.R.Civ.P. 60(b).

III. STANDARD OF REVIEW

We review a motion for relief from judgment under Rule 60(b) for an abuse of discretion. Matter of Roach, 660 F.2d 1316, 1318 (9th Cir. 1981); Thompson v. Housing Authority of the City of Los Angeles, 782 F.2d

(1) mistake, inadvertence, suprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

. . . .

(6) any other reason justifying relief from the operation of the judgment.

Fed.R.Civ.P. 60(b) . The equitable powers to relieve litigants or attorneys from the effects of a judgment are not invoked lightly: "Rule 60(b) provides for extraordinary relief and may be involked only upon a showing of exceptional circumstances." Di Vito v. Fidelity and Deposit Co. of Maryland, 361 F.2d 936, 938 (7th Cir. 1966). Although courts may possess equitable power under Rule 60(b) to alter, modify or vacate their judgments, such power should be exercised only when extraordinary circumstances prevented a party from seeking relief through normal channels of trial or appeal. Ackermann v. United States, 340 U.S. 193, 199 (1950). "It is well recognized that mere carelessness on the part of the litigant or his attorney is not sufficient." United States v. McDonald, 86 F.R.D. 204, 207 (N.D. Ill. 1980); see e.g. Ben Sager Chemicals International, Inc. v. E. Targoza & Co., 560 F.2d 805, 809 (7th Cir. 1977); Cline v. Hoogland, 518 F.2d 776 (8th Cir. 1975). See generally, Wright & Miller, Federal Practice and Procedure §§ 2857-2864. (West 1973).

Sunway argues that the concessions made in the settlement agreement were based upon the presumed truth of the representations by Hurt's counsel that the judgement was properly renewed. Further, that counsel's discovery of the invalidated lien removed the basis for entering into the settlement and that Fed.R.Civ.P. 60(b) entitles them to relief from the agreement, upon which the later judgement was based. We disagree.

To establish an abuse of discretion in denial of a 60 (b) (2) motion, it must be shown that there was "newly discovered evidence", that the movant exercised "due diligence" to discover the evidence, and the newly discovered evidence must be such that it would have been "likely to change the disposition of the case." Coastal Transfer Co. v. Toyota Motor Sales, U.S.A., 833 F.2d 208, 211 (9th Cir. 1987).

Sunway fails on the first two showings. Evidence is not "newly discovered" within the meaning of Fed.R.Civ.P. (60)b if it was in the moving party's possession at the time of trial or could have been discovered with reasonable diligence. Coastal Transfer, at 212; Engelhart Industries, Inc. v. Research Instrumental Corp., 324 F.2d. 347, 352 (9th Cir. 1963), cert. denied, 377 U.S. 923 (1964). If the evidence, alleged to be newly discovered, was of the type which with due diligence could have been discovered, a motion to set aside a judgement should not be granted. Music Research, Inc. v Vanguard Recording Society, Inc., 547 F.2d 192 (2d Cir. 1976).

The status of the judgment is a matter of public record. Richardson, as Sunway's counsel, could reasonably be expected to perform independent inquiry to ascertain the status of a judgement that could potentially eliminate his clients equity. Richardson, having prepared a lengthy trial memorandum on the subject, was familiar with the circumstances and issues surrounding title to the "Julie" property. It is unreasonable to expect that minimal due diligence included ascertaining the validity of the encumbrances against the subject circumstance" requiring the court to set aside the voluntarily stipulated settlement.

The foregoing alone is sufficient to conclude that the bankruptcy court did not, as a matter of law, abuse its discretion by denying Sunway's 60(b) motion. But what is most troubling factually is why Richardson, after discovering that the judgement had not been renewed, did not inform the court or Mr. Wulfers in order to prevent the stipulation from going forward. Richardson, Sunway's counsel, entered the courtroom and was present in court on January 23, 1990,

with knowledge of what he believed to be a material misrepresentation of Hurt's counsel. Richardson could have objected to the settlement or voiced his concern to the court at that time. He did not. No reason is given on why the settlement was allowed to proceed without comment by Richardson. No indication is given whether Richardson communicated this information to Wulfers who was present at the hearing representing Sunway. Instead of objecting and voicing his concern at the time, Richardson did nothing about the matter until the March 12, 1990 hearing, some 47 days later. The bankruptcy court did not err by not invoking its equitable power to allow Sunway out of an agreement when Sunway's counsel clearly had the knowledge and opportunity to remedy the situation before it became final.

V. CONCLUSION

Nothing presented by Sunway justifies relief from the stipulated settlement agreement under Fed.R.Civ.P 60(b) 1, 2, 3, or 6. The bankruptcy court did not abuse its discretion in denying the Appellants motion to vacate the Order and Judgement approving the settlement agreement. Accordingly, we AFFIRM.

We are in agreement with appellees that this is a frivolous appeal. This Panel also concludes that it is appropriate to award sanctions against the appellant and its attorneys in the form of attorney's fees and double costs pursuant to Federal Rule of Appellate Procedure 38. We remand to the bankruptcy court for a factual determination as to the amount of attorneys fees and costs.

APPENDIX ITEM 2

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In re the Marriage of:	)	
	)	
NORMA J. PACE,	)	
	)	NO. DR 66280
Petitioner,	)	
	)	JUDGMENT
- and -	)	
	)	
MILTON G. PACE,	)	
	)	
Respondent.	)	
	)	

THIS MATTER having come on regularly for trial on the 23rd day of February, 1978; both parties appearing individually and by and through their counsel; the Court having heard the testimony of all witnesses and considered the evidence in its entirety;

AS TO THE MARRIAGE OF THE PARTIES, THE COURT HEREBY FINDS that at least one of the parties has been domiciled in the state of Arizona for a period in excess of ninety (90) days prior to the filing of the Petition for Dissolution; that the conciliation provisions of A.R.S. §24-381.09 either do not apply or have been met; and that the marriage of the parties is irretrievably broken and that there is no reasonable prospect of reconciliation.

AS TO SPOUSAL MAINTENANCE, THE COURT HEREBY FINDS that the Petitioner is not fully able to support herself, and although she may eventually receive sufficient property to enable her to support herself, the property will not be sufficient at this time and the Petitioner is therefore entitled to spousal maintenance.

AS TO CHILD CUSTODY, THE COURT HEREBY FINDS, pursuant to stipulation of the parties, that the Petitioner is the fit and proper person to have the care, custody and control of the minor children of the parties, subject to reasonable visitation rights in the Respondent.

AS TO THE DIVISION OF COMMUNITY ASSETS AND LIABILITIES, THE COURT HEREBY FINDS, that all property

owned by the parties, whether real, personal or mixed, was acquired during the marriage and is property of the community of Petitioner and Respondent and therefore subject to equitable division by this Court.

THE COURT FURTHER FINDS that the real property formerly used as the family residence of the parties and situated at 1034 East Julie, Tempe, Arizona now occupied by the Petitioner and the minor children, was acquired as joint tenancy property by the parties.

THE COURT FURTHER FINDS, as to the entity Truck City Lumber Company, that Exhibit 2 described as a "profit and loss statement" contains a far more accurate reflection of the accounts payable and notes payable of that business than does Exhibit 84 described as a "financial statement", and is therefore, a far more accurate statement of the worth of such company business. Therefore, the alleged obligations of Truck City Lumber Company, and more particularly the major obligations and promissory notes signed by the Respondent which were not included within the obligations listed on Exhibit 2, including the promissory note to C. Doleshal, are found not to be obligations of the community. To the extent that some or all of the alleged obligations of Truck City Lumber Company may constitute real obligations, they are found to have been created by the Respondent without consideration or benefit to the community and therefore the obligations of the Respondent only.

AS TO THE VARIOUS CORPORATE ENTITIES, THE COURT HEREBY FINDS that there is a community interest in the following corporate entities:

1. Build-A-Home, Inc., an Arizona corporation;
2. Lumber City Whole sale, Inc., an Arizona corporation;
3. Builders Supply, Inc., now City Builders Supply, Inc., and Arizona corporation;
4. Farm and Ranch Management, Inc., an Arizona corporation;
5. American Rental Storage, Inc., an Arizona corporation;
6. Kachina Plywood, Inc., an Oregon corporation; and
7. Kachina Leasing, an Oregon corporation.

THE COURT FURTHER FINDS that the corporate records of Build-A-Home, Inc., Lumber City Wholesale, Inc., Builders Supply Inc., now City Builders Supply, Inc., Farm and Ranch Management, Inc., and Kachina Plywood, Inc., produced for the

Court did not in fact exist at the time of Petitioner's original attempts to gain production of said documents, but were compiled subsequent to such attempts.

THE COURT FURTHER FINDS that to the extent stock in the entities known as Kachina Plywood, Inc., Lumber City wholesale, Inc., Farm and Ranch Management, Inc., Build-A-Home, Inc., Builders Supply, Inc., now City Builders Supply, Inc., American Storage Rental, Inc., and Kachina Leasing, Inc., was issued to anyone other than Milton and Norma Pace, such stock issuance constituted a fraud on the community and a fraudulent disposition of community property of the parties by the Respondent.

THE COURT FURTHER FINDS that the recent $60,000.00 loan from Gilbert & Sullivan Mortgage Company to some or all of the corporate entities noted previously, was made through such corporate structures to the Respondent and therefore, constituted a distribution of community assets to the Respondent only.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, dissolving the marriage of the parties heretofore existing and returning each party to the status of a single person.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding the care, custody and control of the minor children of the parties to the Petitioner, subject to reasonable visitation rights in the Respondent.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Respondent shall pay to the Petitioner as and for spousal maintenance the sum of FOUR HUNDRED DOLLARS AND NO/100 ($400.00) per month and that the Respondent shall pay to the Petitioner as and for child support the sum of TWO HUNDRED DOLLARS AND NO/100 ($200.00) per month for each of the four minor children of the parties.

All amounts for spousal maintenance and child support payments shall be made through the Clerk of Maricopa County Superior Court, Arizona, and any payment not so made shall be deemed to be a gift to the Petitioner and no credit will be given therefor to Respondent.

All payments of spousal maintenance and child support will be payable one half on the first day of each month and one half one the fifteenth (15th) day of each month commencing May 1, 1978.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the family residence at 1034 East Julie, Tempe,

Arizona from and after the date hereof, shall be owned by the parties as tenants in common and not as joint tenants with right of survivorship. The Petitioner shall have the use and occupancy of the family residence until such time that the youngest of the minor children of the parties reaches the age of eighteen (18) years of age or all of the children are otherwise emancipated or for so long as the Petitioner and at least on of the minor children occupy them same as their residence. Upon the happening of the first of such events, the house shall be sold and the net proceed derived therefrom divided equally between the parties.

If the Petitioner remains in possession of the house, she shall make all of the mortgage payments, including taxes, insurance and assessments and shall pay for all maintenance and repairs.

Upon the sale of the house, the Petitioner shall be reimbursed out of the proceeds of the sale for any extraordinary improvements or extraordinary repairs placed on the premises for which she has complete vouchers and canceled checks. Said reimbursement shall be the lesser of the actual cost of such extraordinary repairs or improvements of the amounts by which they increase the amount of said property. Reimbursement shall be made prior to the division of net proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding to the Petitioner as her sole and separate property all real property owned by the parties or held in the names of Norma Pace, Milton Pace or either of them, and/or in any business name including those of Investa Home or Truck City Lumber Company. A description of the known real property is as follows:

1. Lot 15, Cashion Park South, Broadway Estates, situated in Maricopa County Arizona.

2. Lot 123, except the W 1/4, Broadway Estates, situated in Maricopa County, Arizona.

3. Part of ARB Lot 56, that part SE 1/4 beginning at a point on south line of Section 20 from which point southeast corner of said section bears east 499.75 feet thence north 570.00 feet to iron pipe thence west 571.60 feet to a cross in pavement thence east along the south line of such section 278.60 feet to the point of beginning; except the west 25 feet and south 40 foot road and except right of ways for canals and ditches and except 7 foot triangle in southwest corner situated in Maricopa County Arizona.

4. Part of ARB Lot 56, that part SE 1/4 beginning at a point

on the south line of said section from which point the SE corner of said section bears east 383.78 feet, thence north to the beginning point except the right of way for ditches and canals situated in Maricopa County, Arizona.

5. Lot 4, Broadway Gardens, except the south 7 feet thereof situated in Maricopa County, Arizona.

6. Lot 1, Pritchard Place, except the west 245.9 feet thereof situated in Maricopa County, Arizona.

7. Lot 21, Block 2, Riveria Tract, situated in Maricopa County, Arizona.

8. Lot 17, Block 5, Carefree Homes Resubdivision, situated in Maricopa County, Arizona.

9. Lot 555, Tempe Royal Palms, Unit 12, situated in Maricopa County, Arizona.

10. Part of ARB Lot 52, east half of that part of SE 1/4 beginning at a point which bears north 567.5 feet and 384 feet west of the SE corner of said section thence west 371.6 feet to the corner of Dos Bloque Subdivision thence west 285 feet along the north line said subdivision north 226.57 feet, then east 756.64 feet thence south 226.57 feet to the point of beginning except right of way for ditches and canals and except the west 25 foot road situated in Maricopa County, Arizona.

11. SW 1/4 of NW 1/4 of NW 1/4 of section 16, T1N, R8E, except the road contained therein, situated in Maricopa County, Arizona.

12. Lot 43, Block 2, Caldwell Addition, the south 82 feet situated in Maricopa County, Arizona.

13. Lot 4, Block 1, Greer Place, situated in Maricopa County, Arizona.

14. Lot 4, Block 1, Greer Place, situated in Maricopa County, Arizona.

15 Lot 19, Block 3, North Greer Place, situated in Maricopa County, Arizona.

16. Lot 20, Block 3, North Greer Place, situated in Maricopa County, Arizona.

17. Lot 80, Canyon Crest, Unit 1, situated in Maricopa County, Arizona.

18. Lot 9, Loch Place, situated in Maricopa County, Arizona.

19. Lot 161, Broadway Estates, situated in Maricopa County, Arizona.

20. Lot 32, Crest Lea, situated in Maricopa County, Arizona.

21. Lot 10, Block 1, Norman Acres, situated in Maricopa County, Arizona.

22. Lot 12, Block 1, Horman Acres, situated in Maricopa County, Arizona

23. Lot 13, Block 2, Kensington Place, situated in Maricopa County, Arizona.

24. Lot 14, Block 2, Kensington Place, situated in Maricopa County, Arizona.

25. Lot 15, Sampson Place, situated in Maricopa County, Arizona.

26. Lot 12, Block 17, New Kingman Addition, situated in Mohave County, Arizona.

27. Lot 19, Block 23, New Kingman Addition, situated in Mohave County, Arizona.

28. Lot 59, Block 23, New Kingman Addition, situated in Mohave County, Arizona.

29. Lots 1-4, Block 160, Golden Gate Addition, situated in Mohave County, Arizona.

30. Lot, 7, Block 11, New Kingman, situated in Mohave County, Arizona.

31. The NW 1/4 of NE 1/4 of SW 1/4 of SW 1/4 of Section 22, T1N, R8E, consisting of 2.5 acres, situated in Pinal County, Arizona.

32. Tract 28, Block 32, Lots 5-10, situated in Creede, Mineral County, Colorado.

33. Tract 31, Block 39, Lots 1-8, situated in Creede, Mineral County, Colorado.

34. Tract 36, Block 43, Lots 1-6, situated in Creede, Mineral County, Colorado.

35. Tract 32, Block 43, Lots 1-6, situated in Creede, Mineral County, Colorado.

36. Tract 37, Block 46, Lot 23, situated in Creede, Mineral County, Colorado.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding all shares of stock in Kachina Plywood, Inc., Lumber City Wholesale, Inc., Farm and Ranch Management, Inc.., Build-A-Home, Inc., Builders Supply, Inc., now City Builders Supply, Inc.., American Storage Rental, Inc., and Kachina Leasing issued in the name of Respondent, Milton Pace, or Milt Pace, to the Petitioner

as her sole and separate property.

If the Petitioner initiates and concludes litigation against or on behalf of any of the corporations as a result of which stock issued by any of such corporations is found to have been fraudulently issued to others, such stock is thereby either canceled and/or reissued in the name of the parties hereto, the Court retains jurisdiction to reconsider the distribution of such stock heretofore awarded to the Petitioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding all community interest in American Storage Rental, Inc., and Kachina Leasing to the Petitioner. The Petitioner is authorized to commence such legal action as may be necessary in her name and/or in the name of the Respondent to have the stock in said corporations properly issued to the parties entitled hereto and to enforce any and all rights in connection therewith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding to the Petitioner all mortgages, notes and contracts receivable owing to the parties to the Petitioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding to the Petitioner all shares of stock in Turf Paradise and American Savings Life Insurance Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding to the Petitioner all the personal properties set forth in Exhibit 3 to the Pretrial Statement to the extent that the same exists, to wit:

1. All the Indian rugs;
2. All the Indian jewelry;
3. All the Indian pottery;
4. All the diamond rings;
5. All the cameras;
6. The coin collection;
7. The cash;
8. The silver certificates;
9. The ruby ring; and
10. The 1973 Oldsmobile stationwagon.

Respondent is ordered to deliver such property to the Petitioner forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, awarding to the Respondent the business entity known as Truck City Lumber Company, except the real property used in

connection with said business previously awarded to the Petitioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Respondent shall pay all outstanding community obligations of whatsoever nature including all outstanding obligations of Truck City Lumber Company and shall hold the Petitioner harmless from the payment of any such obligations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Respondent shall forthwith execute deeds to all of the real property herein awarded to the Petitioner and shall immediately execute assignments to the Petitioner of all certificates of stock in any corporation of company in which the parties have an interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Petitioner may institute litigation in the name of the Petitioner or the Respondent, or both, as may be necessary to acquire the full interest in any property of the parties which has been found herein to be community property of the parties.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, granting the firm of Corbet & Eagleburger, Ltd., attorneys for Petitioner, judgment against the Respondent in the sum of FIFTEEN THOUSAND DOLLARS AND NO/100 ($15,000.00) plus all costs expended in this cause in the sum of FOUR THOUSAND SEVEN HUNDRED AND FIFTY-NINE/100 ($4, 701.59)

There being no just cause for delay, Petitioner and her attorneys are authorized execution hereon.

DONE IN OPEN COURT this 15th day of May, 1978.

_____

I. Sylvan Brown
Judge of Superior Court

APPROVED as to form:

_____

Duane Varbel
Attorney for Respondent

APPENDIX ITEM 3
NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re NORMA J. HURT, Debtor.	)	No. 93-16515
	)	BAP No. 0970-2 : AZ-90-01497-RJM
SUNWAY SYSTEMS, INC., Appellant, v. MILTON G. PACE; KACHINA PLYWOOD INC., INTERMOUNTAIN WOOD PRODUCTS, INC.; ROBERTSON WOOD PRODUCTS, INC.; ZECO, INC.; NEVADA-WEST SYSTEMS, INC.; CANCO, INC.; PERCO, INC.; NORMA J. HURT Appellees.	)	ORDER *

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Jones, Meyers, Russell, Judges, Presiding

Argued and Submitted April 12, 1994
San Francisco, California

Before: SKOPIL, NORRIS, and O'SCANNLAIN, Circuit Judges

Milton Pace's motion to allow filing of "Supplemental To: Appellee's Brief" is denied.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

The Bankruptcy Appellate Panel Judgment, including sanctions, is affirmed for the reasons stated in its Memorandum Decision filed June 29, 1993.

AFFIRMED.